IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 22ND MARCH, 2007/1ST CHAITHRA, 1929.

WA.No. 750 OF 2007()

AGAINST THE JUDGEMENT IN WPC.6189/2007 DATED 27/02/2007
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APPELLANT/PETITIONER

V.RAGINI,D/O.AYYAPPAN,AGED 42 YEARS,
AGRICULTURAL OFFICER,VYLASSERIL HOUSE,
FAROOQ COLLEGE P.O,KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/RESPONDENTS
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF AGRICULTURE,
GOVERNMENT SECRETARIAT,TRIVANDRUM.

2. THE DIRECTOR OF AGRICULTURE,TRIVANDRUM.

3. THE PRINCIPAL AGRICULTURAL OFFICER,
PALAKKAD DISTRICT.

GOVERNMENT PLEADER SRI. SANDESH RAJA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 750 OF 2007

DATED THIS, THE 22ND DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

This appeal is filed challenging the judgment rendered by the learned Single Judge in W.P.(C) 6189/2007. The said writ petition was dismissed taking note of the fact that an earlier writ petition - W.P.(C) 6643/2005 - filed by the appellant/petitioner for the same relief was dismissed on 5.7.2006 as not pressed and that she did not seek any orders reserving her right to approach this court for a second time. The learned Single Judge has also found that the challenge made in both the writ petitions were against Ext.P5 by which the appellant was imposed only a penalty of 'censure'. The learned Single Judge, in such circumstances, dismissed the writ petition and awarded a cost of Rs. 10,000/- to be paid to the Kerala Legal Services Authority, against which the present appeal is preferred.

2. Though it is observed in the judgment that the writ petition is barred by the principle of res judicata, strictly speaking, in the absence of any order on merits, the present writ petition may not be barred by res

judicata. But the principle contained in Order XXIII Rule 4 will squarely apply. Even otherwise, a party who files a writ petition and without reserving his right to move the court in future for the same relief when the writ petition happened to be dismissed as not pressed, in our view, the remedy is not to file again another writ petition. Further, what is impugned in the present writ petition is Ext.P5 which is only an order of censure. In such circumstances, we do not find any reason to interfere with the order rendered by the learned Single Judge.

3. Learned counsel for the appellant, however, submitted that the fact that a writ petition was filed earlier was not suppressed by the appellant and she had made mention of the same even in the present writ petition. In such circumstances, there is no warrant to support the inference drawn by the learned Single Judge regarding her conduct of filing the writ petition or there is any suppression of fact. There is an observation that the writ petitioner is a unscrupulous litigant. We have carefully gone through para 3 of the judgment. Learned Single Judge has only observed that entertaining a writ petition on the same cause while earlier writ petition was dismissed as withdrawn without reserving any right, should not be encouraged and such experimental adventurism of unscrupulous litigants shall not be allowed to be played and the court cannot be made the play

field of such experimental adventurism. That is only a general observation made by the learned Single Judge and it cannot be viewed as an observation against the petitioner. However, in the factual situation, we find that the awarding of cost of Rs. 10,000/- is required to be deleted. We do so.

Subject to the above modification, the writ appeal is dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-